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## Senate

### OMNIBUS DEFENSE AUTHORIZATIONS, 1984

Mr. TOWER. Mr. President, I think the Senator from Rhode Island has been waiting patiently to offer his amendment.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

#### AMENDMENT NO. 1501

(Purpose: To delete the provision relating to the use of polygraphs by the Department of Defense)

Mr. CHAFEE. Mr. President, I thank the Senator from Texas. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE), for himself and Mr. LEAHY, proposes an amendment numbered 1501.

Mr. CHAFEE. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 131, beginning with line 8, strike out all down through line 16 on page 133, and substitute in lieu thereof the following:

SEC. 1007. (a) The Secretary of Defense may not, before April 15, 1984, use, enforce, issue, implement, or otherwise rely on any rule, regulation, directive, policy, decision, or order that would permit the use of polygraph examinations in the case of civilian employees of the Department of Defense or members of the Armed Forces in any manner or to any extent greater than was permitted under rules, regulations, directives, policies, decisions, or orders of the Department of Defense in effect on August 5, 1982.

(b) The restrictions prescribed in subsection (a) with respect to the use of polygraph examinations in the Department of Defense shall not apply to the National Security Agency of the Department of Defense.

(c) Prior to April 15, 1984, the Senate Select Committee on Intelligence and the Committee on Armed Services shall hold hearings on the use of polygraphs in the Department of Defense.

Mr. CHAFEE. Mr. President, this amendment, which I offer on behalf of myself and Senator LEAHY amends section 1007 of S. 675—the Omnibus Defense Authorization Act of 1984. This section deals with the use of polygraph examinations in the Department of Defense. Some of my colleagues and I felt that the original language in this section was not given adequate consideration. There were no hearings by any of the appropriate committees. Not the Intelligence Committee nor Judiciary nor Armed Services.

Mr. President, during the last 3 days, Senators LEAHY, JACKSON, MOYNIHAN, KENNEDY, BINGAMAN, and I have met. We have reached a compromise that will protect classified information at the Department of Defense while at the same time protecting the rights of individuals.

What this amendment seeks to achieve is to place a moratorium on the implementation of the so-called Carlucci guidelines, which were issued August 6, 1982, and became effective August 15, 1982. This moratorium, however, does have a sunset provision wherein these guidelines may be implemented after April 15, 1984, should legislation not be passed precluding further implementation of these guidelines.

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The purpose of this moratorium is to allow for hearings looking into implementation of guidelines presently being drafted, and to insure that there will be no abuse of this security tool.

These hearings will help all of us understand a bit more about polygraphs. The CIA feels that the polygraph has been a tool of unique utility in counterintelligence. NSA supports their use. But lately there has been a lot of confusion about the new procedures, specifically what types of polygraph examinations are given and under what circumstances. We need to know these and other facts before considering any legislation.

Certainly, our committee should learn what kind of unauthorized disclosures of classified information necessitate expanded use of polygraph examinations at the Department of Defense, if in fact there is an expanded use. We should know how many unauthorized disclosures there are and the nature and extent of the damage to our national security. And we should also find out the views of not only the Department of Defense, but also NSA and CIA, who have great experience with polygraphs, regarding their accuracy and reliability.

Finally, this compromise language exempts the National Security Agency of the Department of Defense from any restrictions prescribed in subsection (a) of this compromise amendment.

Mr. President, Senator LEAHY, who serves with me on the Intelligence Committee, shares my concern about section 1007 of S. 675, although for somewhat different reasons. I am happy to say that he has joined me in offering this amendment to section 1007 of S. 675. I feel that the Chafee/Leahy compromise language solves many of the problems we have had with this section as reported, and it gives the Senate an opportunity to address this important issue.

We believe that this is a reasonable compromise, and we are pleased to offer it.

Mr. President, this amendment arises because of the so-called Carlucci orders which were issued in August of last year and which became effective this August. Under the amendment which I have presented, there is a moratorium on the Carlucci order going into effect any time before April 15 of next year. Meanwhile, the amendment provides that there will be time for the Armed Services Committee and the Intelligence Committee of the Senate to conduct hearings on the matter of the polygraph examinations.

I want to say that this amendment is the result of compromise, the result of very helpful discussions which Senators LEAHY, JACKSON, MOYNIHAN, KENNEDY, BINGAMAN, and I have had. We have reached this point after giving due consideration to the security needs of the country, at the same time balancing them against the protection of the rights of individuals.

Mr. President, this legislation does not apply in any way to the National Security Agency. They can proceed under the Carlucci or any other orders they wish. There is no moratorium applied to them.

I think this is a good compromise and I assure those present, to the extent that I have anything to do with it and the Intelligence Committee, that we will conduct hearings as soon as reasonably possible on the use of the polygraph examinations.

Mr. MOYNIHAN. Mr. President, I join with the Senator from Rhode Island in supporting this measure and ask to be made a cosponsor.

Mr. CHAFEE. I thank the Senator and I ask unanimous consent that that be permitted, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, first as vice chairman of the Select Committee on Intelligence, I wish to affirm the intention of the committee—Senators CHAFEE, LEAHY, JACKSON, and I have discussed it—to hold the hearings that will be required on our part. I am sure the distinguished

chairman of the Committee on Armed Services will do the same.

I make the point, and I think it is important to state, that the Senator from Washington is concerned about the extent of the Carlucci order and subsequent directives and proposals and the fact that the Congress was not in any way involved in formulating them led to his amendment. The second thing I wish to point out, just to be especially clear to those to whom it might be of interest, is that the National Security Agency is exempted from the moratorium and that concerns that might have arisen on that score are addressed in this matter and it seems to us a good resolution. It means work to be done, but it is the proper work of the Congress.

I thank the Chair.

Mr. JACKSON. Mr. President, I shall be very brief.

Mr. President, this amendment concerns the provisions, adopted by the committee at my suggestion, dealing with use of polygraph examinations in the Department of Defense (DOD). DOD has made limited use of such exams for a number of years, and the provision reported by the committee would not prohibit that use. Certainly, the purpose of this provision was not to hamper the ability of DOD to protect our national security information. I would be the last person to endorse such a measure. But the committee provision does reflect concern about a trend developing in DOD—and in the society at large—that could result in overreliance on a machine and process which is recognized as inherently unreliable and of limited utility.

This trend can best be seen by briefly reviewing the recent historical evolution of polygraph regulations and directives in the Department of Defense.

Since at least 1965, polygraph use in the Department of Defense has been governed by a separate DOD directive. (DOD Directive 5210.48.) The current version's basic date is October 6, 1975,

with an amendment dated January 14, 1977. Key principles embodied in that directive include: First, that "the polygraph shall be employed only as an aid to support other investigative techniques;" second, that a polygraph could not be conducted "unless the person \* \* \* voluntarily consents in writing," third, that "adverse action shall not be taken against a person for refusal to take a polygraph examination;" and fourth, that "any final administrative or judicial determinations \* \* \* shall not be based solely on the results of \* \* \* the polygraph." These principles applied throughout the Department of Defense, even, Mr. President, at the National Security Agency (NSA), where they were embodied in that agency's own polygraph directives. (NSA/CSS Reg. No. 122-3, July 26, 1977.)

Now, Mr. President, those principles remained in place until August of last year when an erosion process began to develop. First, on August 6, 1982, the then Deputy Secretary of Defense authorized procedures within DOD which specifically diluted the protection heretofore afforded individuals who refused to take polygraph exams. By memorandum he promulgated procedures that permit denying incumbent DOD employees—military and civilian—access to certain classified information solely for declining to submit to a polygraph exam. This would not be an exam conducted because of any suspicion about an individual. These exams were to be part of a program to aperiodically recertify the trustworthiness of these DOD employees. This fundamental change—affecting a substantial number of people—was made quietly without, to the best of my knowledge, even any notice to the Congress.

Second, during the fall and winter of 1982-83 the Department was considering possible changes to its polygraph directive which would expand polygraph use. Under the changes, mandatory polygraphs could be used as a precondition to access to certain sensitive

information or as a precondition to certain assignments. And as provided for by the August 6, 1982, memorandum, polygraphs could be used as part of an aperiodic security reinvestigation program for certain individuals, with access to sensitive information able to be cut off solely for refusal to take the polygraph. According to the Assistant Secretary of Defense (Public Affairs) the proposed directive changes would result in "a quadrupling of the (current) testing, and will involve almost 60,000 people." Initial drafts of the new directive also reportedly made other changes to polygraph procedures. Two subcommittees in the House commented extensively on these drafts and the proposal is now being reCOORDINATED in DOD.

Third, on March 11, 1983, the White House issued National Security Decision Directive (NSDD) No. 84. That NSDD, which applies to all executive branch agencies which originate or handle classified information, requires DOD internal procedures that permit mandatory polygraph exams during leak investigations. These procedures must permit "appropriate adverse consequences" following an employee's refusal to take an exam. The meaning of "appropriate adverse consequences" was left open, presumably to the discretion of the heads of executive agencies. This NSDD has not yet been reflected in DOD directives, except by NSA.

Now, Mr. President, that is the history of these regulations that brought me to offer this provision in the committee. Of course, we must make every effort to protect our national security information from individuals who would deal with it cavalierly, or consciously reveal it in violation of law and regulations. But for a number of reasons better protection of our national security information cannot be automatically equated, in my judgment, with greater reliance on the polygraph in DOD. These reasons counsel careful study before going forward with such expanded reliance.

First, the polygraph is recognized as an inherently unreliable instrument; its results are not admissible in the Federal and most State courts. In one study, nearly 50 percent of the truthful individuals were erroneously classified as deceptive. Assuming even the most optimistic accuracy figures for polygraph examinations—90 to 95 percent—countless truthful individuals could be unjustly affected by expanded use of the polygraph in DOD.

Second, wider use of this unreliable instrument, especially its application to military personnel ordered to billets covered by polygraph prescreening requirements, or subjected to it by a politically generated leak investigation, could destroy any number of careers, as well as the general morale of these and other Government employees. Some DOD officials may believe that revocation of access to certain sensitive classified information for failure of or refusal to take a polygraph really is not an "adverse action." That seems to be a rather narrow view of the impact that such an action can have on an individual's career, especially in the national security area.

Third, even executive branch proponents of greater use of the polygraph recognize these limitations. However, they appear to value its intimidation effect. The report which is the basis for NSDD No. 84 concludes that "the polygraph can be an effective tool in eliciting confessions." This seems little more than a paraphrase of the comments attributable to President Nixon, who reportedly said:

Listen, I don't know anything about polygraphs, and I don't know how accurate they are, but I do know that they'll scare the hell out of people.

Fourth, especially under the leak investigation procedures, there is a clear potential for abuse of the polygraph. For example, it is not clear that junior military officers or DOD employees caught up in a leak investigation would be treated the same as high-level officials, both in terms of the requirement to submit to a polygraph

exam and the manner in which the exam is conducted.

Now, Mr. President, since the committee reported this provision several of my colleagues have expressed concern about its potential impact on certain personnel security programs in effect in the National Security Agency. Concern also was expressed about the permanent effect of at least a portion of the provision. After considering them, I have decided to accommodate these concerns. Therefore, I agree with this amendment—which is the result of the work of Senators MOYNIHAN, KENNEDY, CHAFEE, BINGAMAN, and LEAHY—to the committee provision; the key provisions of the amendment would do the following:

It would freeze the terms of DOD polygraph regulations to those in effect on August 5, 1982—that is, before the August 6, 1982, memorandum procedures and NSDD No. 84. This freeze would remain in effect until April 15, 1984.

The National Security Agency would be exempt from this freeze.

The Armed Services Committee and Intelligence Committee of the Senate would be required to hold hearings on the subject of polygraph use in the Department of Defense prior to April 15, 1984.

This framework was essentially the suggestion of the distinguished vice chairman of the Senate Select Committee on Intelligence, Senator MOYNIHAN. The distinguished Senators from Rhode Island and Vermont from the SSCI joined in this proposal with the senior Senator from Massachusetts and the junior Senator from New Mexico. I believe it retains the essential principle of the committee reported provision—to preserve the status quo on certain key DOD policies with respect to polygraph use—while giving special recognition to the case of the National Security Agency. The compromise will give the appropriate committees the time to further review the implications of greater polygraph use

in their respective jurisdictions. More specifically, the Armed Services Committee can review polygraph use in the Department of Defense overall, and the Intelligence Committee can focus on the implications for the intelligence aspects of the Department.

Now, Mr. President, to prepare effectively for the hearings required by the amendment, it will be important to have certain categories of information in hand in a timely fashion. One category of information would concern the following:

First, unauthorized disclosures of classified information that necessitate expanded use of polygraph examinations in the Department of Defense, second, the nature and extent of such unauthorized disclosures, and third, the nature and extent of the damage to the national security that has resulted from the unauthorized disclosures, including specific examples of the damage and the manner in which the damage was determined and measured. A second important category of information would focus on the position of the Department of Defense regarding the accuracy and reliability of polygraph examinations, including:

First, a description of specific studies—including statistical analyses based on such studies—conducted by or for the Department of Defense, or relied upon by the Department, to support the Department's position on the accuracy and reliability of polygraph examinations; and

Second, the Secretary's analysis and explanation of how any potential damage to innocent persons erroneously identified by polygraph examinations as having given false responses or information during the course of polygraph examinations is offset by the potential benefits to the United States of expanded use of polygraph examinations.

Mr. President, I believe my distinguished colleague from Rhode Island agrees with me that these would be important categories of information for purposes of these hearings. I, for

one, would expect the Department of Defense to cooperate fully and in timely fashion with any formal or informal requests from the committees or individual Members for such information. I would hope that Chairman TOWER would agree to a joint letter formally asking Secretary Weinberger for information such as that discussed above on behalf of the Armed Services Committee. This information will be invaluable and essential for use in the hearings which each committee will have on this issue; we will need it to judge whether the use of the polygraph examination should be expanded in the Department of Defense; and, if so, just how such an expansion should be put into effect.

In summary, Mr. President, this proposal is a reasonable compromise which preserves the essence of the committee's position—for a fixed period—and will give the Congress the opportunity to exercise its oversight responsibilities on this very important question.

Mr. HUDDLESTON. Mr. President, leaks and other unauthorized disclosures of classified information are a continuing problem for our Government, and especially for the intelligence community. I have expressed concern for some time about the selective leaking of classified information to promote particular policies. This practice risks serious erosion of the credibility of our national security structure, frequently for the sake of immediate political advantage.

This problem has existed under administrations of both parties. However, it has taken on a new and more serious character with the issuance of a recent Presidential directive ordering the expanded use of polygraphs in investigations of unauthorized disclosures of classified information.

Last year the Defense Department drafted new regulations that would have expanded polygraphing in the Defense Department beyond the restrictions imposed by a 1975 directive that limited use of lie detectors to "se-

rious criminal cases, national security investigations, and highly sensitive national security access cases." The scope of the proposed change is not entirely clear, and no hearings have been held in the Senate on the issue.

The Defense Department has a legitimate concern about some narrow counterintelligence and security requirements that do not involve news leaks. There are, as the 1975 directive recognizes, special circumstances that involve access to highly sensitive national security information. This is especially true in the intelligence area.

These limited objectives are far different from the apparent purposes of the Presidential directive of March 11, 1983, which seems to go far beyond the Defense Department's proposal. There is a real danger that the Presidential directive could encourage the wider use of polygraphs in cases of news leaks on a selective basis, depending on whether the leak favored or opposed the administration's policy interests.

These issues require much greater attention by the appropriate committees of the Senate. The Intelligence Committee, for example, has been looking into the counterintelligence and security considerations that might justify some modification in established polygraph policies. The Intelligence Committee has also monitored the performance of the executive branch with respect to unauthorized disclosure of classified intelligence information, especially in cases of compromise of sources and methods.

Before the Congress enacts permanent legislative standards and restrictions for use of the polygraph in circumstances affecting intelligence and counterintelligence activities, the Intelligence Committee should take an in-depth look at the facts. I hope the Senate's consideration of section 1007 of the Defense Authorization Act will result in more serious attention by the Intelligence Committee and other appropriate Senate committees to the full range of issues in this area.

**Mr. THURMOND.** Mr. President, I rise in support of this amendment offered to S. 675. The language presently in the bill is strongly opposed by the Department of Defense and the intelligence community who were not consulted in preparation of this language.

The use of polygraph examinations is a controversial issue. What is at stake here, however, is restrictions concerning access to very sensitive compartmented information.

The language presently in the bill sets a precedent which in essence empowers military personnel to have access to highly classified information, regardless of the results of, or the refusal to take a polygraph examination. The Department of Defense is developing new guidelines and policies with respect to polygraph examinations. To legislate now would preempt orderly policy development.

Mr. President, I must reiterate the strong opposition of the intelligence community and the Department of Defense to the present language. The amendment being offered, however, has the support of the intelligence community and the Department of Defense. I strongly urge my colleagues to support this amendment. The Armed Services Committee and the Intelligence Committee will conduct thorough hearings on the use of polygraph examinations within the near future.

● **Mr. KENNEDY.** Mr. President, I want to commend my colleague, Senator JACKSON, for his leadership on this important issue, and the efforts of Senators CHAFEE, LEAHY, MOYNIHAN, BINGAMAN and the chairman of the Armed Services Committee, Senator TOWER, which brought about this agreement. The regulations in question were adopted by the administration without consultation with Congress, and could have a significant impact on the lives of millions of members of the Armed Forces as well as civilians. I believe it is essential that Congress have an opportunity to review the administration's proposals carefully, and hope that the administration will cooperate by providing all the information necessary to assure an informed decision by Congress.●

**Mr. TOWER.** Mr. President, there has been satisfactory work by both parties. On behalf of the majority side, I am prepared to accept the amendment.

**Mr. LEAHY** addressed the Chair.

**The PRESIDING OFFICER.** The Senator from Vermont is recognized.

**Mr. LEAHY.** I take just one moment as a cosponsor of this amendment to commend the senior Senator from Washington, the Senator from Rhode Island, and the Senator from New York (Mr. MOYNIHAN), Senator KENNEDY, Senator BINGAMAN, and others who have worked on this issue. I think it is an extremely important one.

I hope that all will understand that by this amendment, which will probably be accepted, we are saying that the Armed Services Committee and the Select Committee on Intelligence will hold detailed and intensive hearings on this issue. Otherwise, I am afraid it is a matter that is going to be dealt with by Executive order and not necessarily in the way that Members of Congress would wish.

This is an area in which we are all agreed. I commend my good friend from Rhode Island (Mr. CHAFEE) for his work on this. I intend to work closely with him and with the distinguished vice chairman (Mr. MOYNIHAN). I know my colleagues on the Armed Services Committee will.

The sooner we are able to do that, the better. The sooner we are able to bring out specific legislation explaining to the Congress the use of polygraph, the better.

I yield back the floor.

**Mr. CHAFEE.** Mr. President, I thank the distinguished senior Senator from Washington and each of the Senators who worked with us, Senator MOYNIHAN, Senator LEAHY, of course, a cosponsor of this amendment, Senator KENNEDY, and Senator BINGAMAN, and express my appreciation to the chairman of the Armed Services Committee for giving us the lead in this particular matter and trying to arrive at a reasonable conclusion.

If there is nothing further, Mr. President, I move passage of the amendment.

**The PRESIDING OFFICER.** Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1501) was agreed to.

**Mr. JACKSON.** Mr. President, I move to reconsider the vote by which the amendment was agreed to.

**Mr. TOWER.** I move to lay that motion on the table. The motion to lay on the table was agreed to.